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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203099
Party	Defendant MediZine, LLC
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Date	01/27/2012
Attachments	REMEDYMD - ANSWER TO NOTICE OF OPPOSITION.pdf (5 pages)(26397 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/003,997

Published in the Official Gazette on September 6, 2011

Mark: REMEDYMD

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REMEDYMD, INC. : Opposition No. 91203099

Opposer, :

-against- :

MEDIZINE, LLC :

Applicant. :

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Box TTAB - NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, MediZine, LLC (via name change now Remedy Health Media, LLC), for its Answer to the Notice of Opposition filed by RemedyMD, Inc., against the application for registration of Applicant's mark REMEDYMD, Serial No. 85/003,997, published in the Official Gazette on September 6, 2011, pleads and answers as follows:

1. Answering Paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.
2. Answering Paragraph 2 of the Notice of Opposition, Applicant admits that Opposer is the named registrant of the registration enumerated therein. With respect to the remaining allegations set forth in Paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.
3. Answering Paragraph 3 of the Notice of Opposition, Applicant admits that the electronic records of the U.S. Trademark Office indicate that Opposer's Combined Declaration of Use and Incontestability were accepted and acknowledged by the Trademark Office on January 6, 2011. With respect to the remaining allegations set forth in Paragraph 3 of the Notice

of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

4. Answering Paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

5. Answering Paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

6. Answering Paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

7. Answering Paragraph 7 of the Notice of Opposition, Applicant admits to the allegations thereof.

8. Answering Paragraph 8 of the Notice of Opposition, Applicant admits to the allegations thereof, except said name change occurred in July 2010, documentation of which has been filed with the Assignments Branch of the U.S. Trademark Office.

9. Answering Paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

10. Answering Paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

11. Answering Paragraph 11 of the Notice of Opposition, Applicant denies the allegations thereof.

12. Answering Paragraph 12 of the Notice of Opposition, Applicant denies the allegations thereof.

13. Answering Paragraph 13 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations relating to Opposer's claim that it has built valuable goodwill in the REMEDYMD mark, and accordingly denies the allegations thereof. With respect to the remaining allegations set forth in Paragraph 13 of the Notice of Opposition, Applicant denies the allegations thereof.

14. Answering Paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

15. Answering Paragraph 15 of the Notice of Opposition, Applicant denies the allegations thereof.

16. Answering Paragraph 16 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations relating to Opposer's claim of first use, and accordingly denies the allegations thereof. With respect to the remaining allegations set forth in Paragraph 16 of the Notice of Opposition, Applicant denies the allegations thereof.

17. Answering Paragraph 17 of the Notice of Opposition, Applicant denies the allegations thereof.

18. Answering Paragraph 18 of the Notice of Opposition, Applicant denies the allegations thereof.

AFFIRMATIVE DEFENSES

19. Applicant affirmatively alleges that the U.S. Patent and Trademark Office ("PTO"), upon review of substantive arguments and evidence from Applicant, removed its refusal to register based on Opposer's claimed registration against Applicant's application for REMEDYMD. If there was any reason to believe that the average or relevant consumer would be confused as to the sources of the respective goods and services underlying the subject marks, the PTO would have certainly withheld approval of the subject application.

20. Applicant's goods and services are completely unrelated to those of Opposer, are marketed through wholly-different channels of trade, and are targeted toward entirely different consumer bases unlikely to overlap. As such, the avenues of commerce for Applicant's products and services are disparate from those of Opposer, and confusion in the relevant marketplaces does not exist.

21. Applicant affirmatively alleges that since the adoption of its mark in commerce in connection with its goods and services, Applicant is unaware of any instances of actual confusion between its mark and Opposer's claimed mark.

22. Applicant is the owner of numerous REMEDY and REMEDY-formative marks and registrations in connection with goods and services closely related and identical to those covered by the subject application, including REMEDY, REMEDYDIRECT, REMEDYLIFE, and others, dating back to 2002, long prior to Opposer's claimed first use date. Given that the opposed mark is one of Applicant's family of marks, and is merely the combination of Applicant's well-known and long-established REMEDY house mark and the term MD, the latter of which representing generic/non-functioning terminology in the relevant industries, there is no possibility, let alone likelihood, of consumer or market confusion.

In view of the foregoing, Applicant contends that this Opposition is groundless and baseless in that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of or has a rightful claim to Applicant's trademark.

Dated: New York, New York
January 27, 2012

Respectfully submitted,

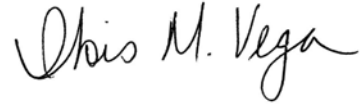
REED SMITH LLP

By 

Darren B. Cohen
Attorney for Applicant
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New York, New York 10022
212-549-0346

Certificate of Service

I hereby certify that a copy of the foregoing Applicant's Answer to Notice of Opposition was mailed first-class mail postage prepaid to Kenneth W. Jennings, Jr., Esq., ColterJennings, 333 South 520 West, Lindon, Utah 84042 this 27th day of January 2012.

A handwritten signature in black ink that reads "Ibis M. Vega". The signature is written in a cursive style with a horizontal line underneath it.

Ibis M. Vega
Assistant to Attorney for Applicant